



COUNTERING SMALL BRIBES

PRINCIPLES AND GOOD PRACTICE GUIDANCE
FOR DEALING WITH SMALL BRIBES INCLUDING
FACILITATION PAYMENTS

Supported by:



Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 Chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

TI-UK's registered UK charity number is 1112842.

Acknowledgements

We are grateful to the members of the Expert Advisory Committee for supporting and advising on the development of this Guidance: Simon Airey of DLA Piper; Julian Glass of FTI Consulting; Andrew Hayward of Subsea 7 Ltd; Neil Holt; Andy McClarron; Tamara Northcott; and Ian Trumper.

We are also grateful for expert assistance provided during the research process by Michael F. Munro (Transocean, Ltd) of the Committee to Address Facilitation Payments; Martin Topping of the Royal Bank of Scotland; Travis Winslow (Carnival Corporation & plc) and Cecilia Müller (A.P. Moller-Maersk A/S) of the Marine Anti-Corruption Network; and Mark Winters of Centrica (UK).

This publication has been kindly supported by:

DLA Piper, a global law firm with lawyers located in thirty countries, www.dlapiper.com

FTI Consulting, a global business advisory firm, www.fticonsulting.co.uk

Lead author: Peter Wilkinson

Editors: Robert Barrington and Nick Maxwell

Publisher: Transparency International UK

Published: June 2014

ISBN 978-0-9573410-8-1

© 2014 Transparency International UK. All rights reserved. Reproduction in whole or in parts is permitted providing that full credit is given to Transparency International UK and provided that any such reproduction, whether in whole or in parts, is not sold or incorporated in works that are sold. Written permission must be sought from Transparency International UK if any such reproduction would adapt or modify the original content.

Disclaimer

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of June 2014. Nevertheless, Transparency International UK cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations and best practice guidance reflect Transparency International UK's opinion. They should not be taken to represent the views of those quoted or interviewed or of members of the Advisory Committee or of DLA Piper or FTI Consulting. Transparency International UK assumes no liability to any third party for the information contained herein, its interpretation or for any reliance of any third party. The document should not be construed as a recommendation, endorsement, opinion or approval of any kind. This Guidance has been produced for information only and should not be relied on for legal purposes. Legal advice should always be sought before taking action based on the information provided.

This publication is printed on Forest Stewardship Council (FSC) paper.

CONTENTS

1. INTRODUCTION	3
2. WHAT IS A SMALL BRIBE?	5
3. THE CHALLENGES OF SMALL BRIBES	7
4. PRINCIPLES FOR COUNTERING SMALL BRIBES	8
4.1 ENSURE A SUPPORTING CORPORATE CULTURE	8
4.2 COMMIT TO ELIMINATING SMALL BRIBES	8
4.3 ASSESS THE RISKS OF SMALL BRIBES	9
4.4 IMPLEMENT THE PROGRAMME TO COUNTER SMALL BRIBES	15
4.4.1 COMMUNICATION AND TRAINING OF EMPLOYEES	16
4.4.2 PREVENT SMALL BRIBES BEING MADE BY THIRD PARTIES	18
4.4.3 THE INTERNAL ACCOUNTING CONTROLS ADDRESS SMALL BRIBES	20
4.4.4 PREPARE FOR MANAGING INCIDENTS	21
4.4.5 MONITOR AND EVALUATE	24
4.5 INFLUENCE THE OPERATING ENVIRONMENT	25
APPENDIX ONE: CHECKLIST	28
APPENDIX TWO: RED FLAGS	35
APPENDIX THREE: NOTES ON FACILITATION PAYMENTS	36
APPENDIX FOUR: RESOURCES	40

PRINCIPLES FOR COUNTERING SMALL BRIBES

Effective countering of small bribes - including facilitation payments - will be based on the following principles.

1: There is a supporting culture of integrity

A corporate commitment to ethics and integrity provides an enabling environment for countering small bribes and will include integrity expressed in 'tone-from-the-top', a policy of prohibition of bribery in any form and an effective overarching anti-bribery programme.

2: The company commits to eliminating small bribes

The company commits to a policy of prohibition of small bribes and a strategy for their elimination through a programme of internal controls and collaborative action.

3: Risk assessment is the basis for designing the strategy and programme to eliminate small bribes

The company identifies and assesses the risks that small bribes are demanded or paid in its activities and operations, and the factors that cause them.

4: The company implements a programme to counter small bribes

A programme of internal controls is implemented comprising detailed policies and procedures to counter small bribes.

5: Communication and training are provided to employees

As part of the programme, communications and training make clear the company's policy of prohibition of small bribes and give requisite information and advice to employees on how to anticipate and resist demands, seek advice and to report concerns or instances of small bribes.

6: Attention is given to countering third party risks

As part of the programme, the company has in place appropriate procedures for third parties including due diligence, contract terms, communication, training and monitoring.

7: The internal accounting controls are designed specifically to counter small bribes

As part of the programme, the company's internal accounting controls are modified and extended to counter small bribes.

8: Appropriate actions are taken if small bribes are detected

As part of the programme, the company has a procedure to deal with any incidents including investigation and review, disciplinary action and consideration of reporting the incident to the relevant authorities.

9: The company monitors the effectiveness of its programme to counter small bribes

The programme for countering small bribes is regularly monitored and reviewed.

10: The company acts strategically to influence the corruption environment in which it operates

The company accepts responsibility for addressing entrenched factors that lead to demands for small bribe, for example by collaborative working and investing in communities.

1 INTRODUCTION

This guidance is part of a series of publications produced by Transparency International UK (TI-UK) providing advice on good practice in countering bribery and corruption. The aim of this guidance is to help companies to address the significant challenge of countering small bribes, including facilitation payments. It is also designed to be of assistance to regulators, law-makers, prosecuting agencies and professional advisers which may wish to refer to a Transparency International position when forming their own decisions. The guidance draws on Transparency International's extensive experience in developing global anti-bribery practice for the private sector as well as the advice and practical experience of the project's Expert Advisory Committee, and interviews with representatives of companies.

SCOPE OF SMALL BRIBES FOR THIS GUIDANCE

- Can take place in public and private sectors
- Cash or in-kind benefit such as cigarettes, alcohol or gifts
- Small in value
- Active and passive bribery
- Bribe is given for one of the following reasons:
 - to obtain performance or speed up a function to which the payer has legal entitlement and the official has no discretion such as obtaining release of goods from customs
 - to induce an official or employee to perform a function improperly such as falsification of records, to not act on or overlook a transgression such as incomplete paperwork or the issue of a speeding ticket
 - to give improper preferential treatment such as priority in cargo handling

Payments made in response to demands accompanied by genuine threats to life, limb or liberty are payments made under duress and this may provide a legal defence for the payment.

Countering small bribes can be exceptionally challenging for companies ... However, the consequences of not taking on the challenge can be substantial

Countering small bribes can be exceptionally challenging for companies. Resisting these bribes can have costs for the business and demands for small bribes are often made at times of operational vulnerability. The factors which create demands for small bribes are often entrenched and pervasive and the payments can be hard for management to detect, especially when they are made by third parties and deliberately concealed.

However, the consequences of not addressing the challenge can be substantial. The company may face:

- Legal risks (including criminal prosecution, settlement and investigation costs)
- Reputational damage (including market and financing issues, loss of confidence by business partners, and increased vulnerability to bribe solicitation and demands)
- Operational impacts (including the cost to the business of systematically paying small bribes, market distortion, entrenching a corrupt bureaucracy and putting employees at risk).

At a broader level, paying small bribes feeds a climate of corruption, which creates an unstable operating environment for companies. It destroys trust in government and public administration, undermines the rule of law, damages human rights and distorts business transactions. Small bribes are not confined to demands made to companies, as there are no boundaries for officials and others who demand bribes. The effects in countries with high levels of corruption can be widespread. In such circumstances, businesses and citizens may face daily demands for payments for essential transactions, increasing the costs of living to citizens and adding costs and uncertainties to business. Small bribes are part of a cycle of bribery that corrodes public and business standards and provides a climate for much larger public sector bribery and state theft.

More and more companies have in place a global no-bribes policy and are rigorous about enforcing it

WHY IT MATTERS: TEN EXAMPLES OF THE DAMAGE CAUSED BY SMALL BRIBES

- Feeding a culture of corruption
- A tax on the poor, who are forced to use resources they can ill-afford in almost any interaction with the state
- Abuse of citizens' rights
- Restriction or denial of access to essential services such as health, education, justice
- Loss of state or private revenue
- Misallocation of resources
- Destruction of trust in public service, government and the rule of law
- Inefficiency and maladministration in public services
- Distortion in business operations
- Used by criminal and terrorist organisations to facilitate their operations.

Although some companies ask how they can be expected to operate in certain markets without paying small bribes, more and more companies have in place a global no-bribes policy and are rigorous about enforcing it. They are starting to find that their reputation for not paying bribes means they are no longer asked; whereas those that pay small bribes can be subject to an ever-increasing spiral of demands.

This guidance sets out how companies can set about countering small bribes, including eliminating small bribes from their activities and operations and equipping themselves to resist demands. However, for persistent high risk transactions or locations, companies may need to go further and act strategically to confront and eliminate the demands for small bribes. This guidance therefore also makes recommendations about how companies can act, sometimes collectively, to reduce the demands for small bribes.

TERMINOLOGY: SMALL BRIBES AND FACILITATION PAYMENTS

This guidance applies to small bribes in all forms, including facilitation payments.

Facilitation payments are simply a form of small bribe disguised with another name. The term facilitation payment usually covers payments made to officials to obtain or speed up routine services which the officials are required to provide. It does not include payments made directly to obtain or retain business.

The US Foreign Corrupt Practices Act ('FCPA'), which was passed in 1977, introduced in 1988 the concept of facilitating (also commonly referred to as 'facilitation') payments with an exception from prosecution for such payments. This was to recognise a type of intractable bribery confronting US businesses when operating abroad. Since then, this form of bribery has attracted considerable debate and controversy.

Facilitation payments are illegal in most countries, although a small number including Australia, New Zealand, South Korea and the USA provide exceptions, in certain circumstances, for facilitation payments when paid abroad. They remain illegal in their own domestic law.

There is growing international recognition that facilitation payments are not easily separated from other forms of small bribe and more and more companies are following a no-bribes policy throughout their global operations, with no exemptions for facilitation payments.

'Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes. There was no exemption for such payments under the previous law nor is there under the Bribery Act.'

Guidance to the UK Bribery Act, UK Ministry of Justice, 2010¹

1. Note also the Serious Fraud Office's reiteration that facilitation payments are bribes
David Green CB QC, Director of the Serious Fraud Office, 6th December 2012, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/revised-policies.aspx>

2 WHAT IS A SMALL BRIBE?

Typically, a bribe demander will use explicit or implied threats of delay, inconvenience, business cost or some other undesirable outcome

The scope of this Guidance is small bribes. This includes facilitation payments but additionally covers payments made to induce an improper action. The scope also includes payments made not only to public officials but to employees in the private sector.

Small bribes can come in many forms including:

- Cash or vouchers
- Benefits in-kind, such as
 - Tickets for a sporting event
 - Pre-paid phone cards
 - Alcohol
 - Tobacco
 - Perfume

Typically, a bribe demander will use explicit or implied threats of delay, inconvenience, business cost or some other undesirable outcome. Bribes can also be solicited by an official with the inducement of a faster service, overlooking incomplete paperwork, or some other benefit, and may also be offered by the bribe payer to obtain such benefit. Payments made in response to genuine threats to life, limb or liberty are payments made under duress, and this may provide a legal defence for the payment. Economic or other coercion such as travel delay, however costly or inconvenient, may appear valid reasons for making a payment, but are not legal grounds for paying a small bribe.

The guidance focuses on small bribes paid to other parties (termed 'active bribery') but when designing controls to counter small bribes, it should not be overlooked that small bribes may be solicited by or paid to company employees or agents (termed 'passive bribery').

How small is a small bribe?

What constitutes 'small' is clearly relative. A bribe of £20 paid to a passport official may seem small to the business traveller, but the average daily wage in the country may be only £2. A bribe of £200 in a developed country may be seen as small. A single bribe may be small in itself, but – very often – small bribes are paid regularly and over time the amounts can be considerable.

It is important to remember that in aggregate, many small bribes amount to large-scale bribery. A company might easily discover that it is paying hundreds of thousands of pounds each year in so-called small bribes.

There can be no exact definition of what constitutes the value of a small bribe so this guidance focuses on the transactions and interactions where bribes are demanded, rather than the nominal value of the bribe. Examples of the bribes and interactions are shown below in Table 1.

It is important to remember that in aggregate, many small bribes amount to large-scale bribery

TABLE 1: EXAMPLES OF SMALL BRIBE DEMANDS FROM OFFICIALS (ACTIVE BRIBERY)

Activity	Public function	Service or actions to which the bribe payer is entitled	Improper actions by the official or employee
Transport and logistics	Customs	Inspection, release of goods, temporary import permits, classification of a product.	Exemption from inspections, falsification of documentation for contents and weight, overlooking improperly prepared or incomplete paperwork.
	Post and parcels	Mail and parcel service.	Improper allocation of priority clearance and delivery, misclassifying contents.
	Transport	Passage on toll bridges and roads.	Improper booking or reservation of space in transportation.
	Maritime	Vessel clearance, loading and unloading cargo, canal transits.	Approval of incomplete documentation.
Services	Utilities	Supply of telecommunications, power, water.	Falsification of usage records in order to reduce billing.
	Any	Service fees are permitted by a government, per diems and cash payments paid direct to officials for carrying out activities or expenses incurred for the company such as accompanying company employees, visiting facilities, inspections associated with contract performance or transit of goods across the country, petrol for vehicles.	Services outside the official's or employee's permitted or assigned work.
Licences, approvals	Government: National, federal, local	Granting of vehicle licenses, planning approvals, permits, licenses, certification, health and safety, fire regulation, inspections.	Overlooking abuse of regulations e.g. car parking fines, dumping unauthorised waste in a landfill.
Security, policing, military	Police	Protection and security services, waiving fines.	Concocted offences, harassment, and improper issue of security documents.
Immigration	Interior Ministry	Border control, visas, residency and work permits, medical certification.	Overlooking incomplete or improper documentation.
Information	Any	Commercially valuable information.	Criminal records and investigations, personal data, planning information, public contracts..
Judicial	Courts	Access to or speeding up of court processes and documentation.	Abuse of judicial process e.g. losing documents, illegal access to records.
Taxation	Revenue and Customs	Release of tax or VAT refunds, approval of returns, books and documents.	Overlooking errors or offences.

3 THE CHALLENGES OF SMALL BRIBES

Demands most often occur in markets where corruption is rife and small bribes are commonly demanded in aspects of business operations interfacing with public officials

The employee may be isolated and have to act on their own judgement and possibly under stress

Dealing with the risk of small bribes is one of the most challenging areas for companies in countering bribery. Demands most often occur in countries where corruption is rife and small bribes are commonly demanded when interfacing with public officials.

This guidance identifies six areas in which companies commonly find demands for small bribes to be challenging.

Resisting small bribes can have substantial costs for the business: The consequences of refusing to pay bribes may be significant. For example, there can be costs associated with delays in moving goods through customs or hold ups at ports and canals. If goods or shipments are time-sensitive, entire shipments might be put at risk. Companies may lose out to competitors who use small bribes to gain advantage in speeding up their own operations. Employees can be delayed in their travels and work.

The factors creating demands for small bribes are often entrenched and pervasive: Demands for small bribes originate from underlying structural and cultural issues which do not easily lend themselves to change. Small bribes are common in many countries and can be found across all government functions with which a company has contact. Low level officials may be poorly paid, but raising salaries may not necessarily drive out demands for small bribes as more junior officials may be required by senior officials to deliver payments gathered from small bribes.

Small bribes are often systemic: Demands for small bribes are not usually isolated instances. When government functions have ingrained cultures of demanding small bribes for routine actions such as moving goods through customs, a company can find that it is facing substantial demands in aggregate, even though individual demands are small.

Small bribes are hard to detect especially those made by third parties: Small bribes can easily be hidden in expense claims or invoices. This is especially so when paid by a third party such as an agent or supplier. A policy of prohibiting small bribes may drive the practice underground with payments being made through third parties or employees paying out of their own pockets.

Demands are made at times of vulnerability: The demands are often related to urgent issues when it not possible to obtain advice or support in time, and errors may be made. The employee may be isolated and have to act on their own judgement and possibly under stress.

SMEs may have less capacity to resist demands: Small and Medium Size Enterprises (SMEs) can be more vulnerable to demands to pay bribes and have less influence if they want to promote change. For instance, large companies have greater resources to carry out risk assessment and train their staff. They may have access to high level officials who can help in dealing with officials making small bribe demands, and can use the size of their operations and value to the economy to force change. Larger companies can impose their requirements on third parties and they may be able to bring a global reputation for integrity to discourage approaches for bribes.

To address this difficult area of business ethics and integrity, this guidance sets out ten principles for countering small bribes at the organisational and operational level, as well as how to work with others to confront and seek to eliminate small bribes in persistent high-risk areas.

4 TEN PRINCIPLES FOR COUNTERING SMALL BRIBES

The previous sections have defined the scope of small bribes, discussed the context, their effects on societies, and the costs and challenges for companies. The question is how can a company practically counter small bribes which pose such challenges? This guidance recommends that companies follow the ten good practice principles described in this section. These principles are aligned to the approach of the Business Principles for Countering Bribery.²

4.1 ENSURE A SUPPORTING CORPORATE CULTURE

Principle 1: There is a supporting culture of integrity

A corporate commitment to ethics and integrity provides an enabling environment for countering small bribes and will include integrity expressed in 'tone-from-the-top', a policy of prohibition of bribery in any form and an effective over-arching anti-bribery programme.

A corporate culture with a commitment to integrity and leadership providing 'tone-from-the-top' is critical to implementing a programme to counter small bribes as it sets the standard and expectations for employees and third parties. It also communicates the seriousness which the company attaches to behaving ethically to other stakeholders and those who have contact with the company. A culture of integrity means:

- Integrity and ethical values are defined and made clear as fundamental and non-negotiable
- The Board provides oversight and direction to countering bribery
- The company commits to not penalise employees who refuse to pay bribes and is prepared to accept any resultant costs or delays
- The Chair, Board and senior management provide 'tone from-the-top' shown by their actions and communications, active and prominent commitment to furthering the integrity culture and the policy of prohibition of bribery
- Responsibilities are assigned for implementing the anti-bribery programme
- Senior management review and are accountable for implementation of the anti-bribery programme
- The company's people and those contracted to work for the company understand and abide by the company's values and policies for integrity and ethics
- The Board review the results of the implementation of the anti-bribery programme

The over-arching anti-bribery programme should be checked to ensure that it represents good practice and will provide an adequate and effective basis for developing detailed policies and procedures to counter small bribes.

4.2 COMMIT TO ELIMINATING SMALL BRIBES

Principle 2: The company commits to eliminating small bribes

The company commits to a policy of prohibition of small bribes and a strategy for their elimination through a programme of internal controls and collaborative action.

Having assured the existence of a corporate integrity culture and the platform of an effective anti-bribery programme, work can start on designing and implementing the policy, strategy and procedures, and collaborative actions for eliminating small bribes.

2. *Business Principles for Countering Bribery*, third edition, Transparency International, 2014
http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery

A corporate culture with a commitment to integrity and leadership providing 'tone from the top' is critical

Building on the over-arching policy of prohibition of bribery, the Board should commit to a specific policy for prohibition and elimination of small bribes

Commit to a policy of prohibition and elimination of small bribes

Building on the over-arching policy of prohibition of bribery, the Board should commit to a specific policy for prohibition and elimination of small bribes. The policy will refer to allowing payments of small bribes where demands are accompanied with a genuine threat to life, limb or liberty. It can make clear that no employee or intermediary will be penalised for delay or costs incurred as a result of refusing to pay bribes. Examples of small bribes can be provided in support of the policy statement to enable employees and third parties to understand what is meant by small bribes. If the over-arching anti-bribery policy is supported by a guidance document or business principles handbook, this can be extended to include discussion of the prohibition of small bribes, what this policy means in practice, the main forms of small bribery risks, examples of demands for small bribes and what is expected of employees and the sanctions process if the policy is breached.

The leadership should support a policy of prohibition of small bribes by:

- ensuring it has a clear understanding of the scope of small bribes, the associated risks and issues
- recognising the entrenched nature of demands for small bribes and the complexities of mitigating them
- committing to eliminating small bribes through a strategic approach
- requiring implementation of a tailored anti-bribery programme to counter small bribes
- accepting a responsibility to work in societies, most likely through collective action, to mitigate the factors that lead to demands for small bribes
- committing adequate resources
- accepting that costs may be incurred initially in resisting demands such as delays in delivery or loss of goods
- providing 'tone-from-the-top' by communicating key messages on countering small bribes throughout the company including, if the company operates abroad, visits by directors and senior management to bring the messages to local employees and agents.

'What has worked for our company is a consistent tone coming from the top and backed by decisions that mean absorbing costs and cancelling contracts'.

Compliance Manager, global oil company

INTRODUCING A POLICY: SOME INITIAL ISSUES BUT THEN BACK TO NORMAL

A survey by TRACE of 42 companies found that most of the companies interviewed reported delays and unusual bureaucratic steps in the first 30 to 45 days after abolishing small bribes. After this period, business 'more or less' returned to normal.

Small bribes Buy Big Problems, Alexandra Wrage, TRACE and Matthew Vega, CIPE, 2007

The demands for small bribes confronting your company may be wide-spread

The demands for small bribes confronting your company may be widespread. An integrated strategy to address small bribes should be developed based on an assessment of risks and the underlying factors that give rise to demands. This will allow your company to take a comprehensive approach to the aim of eliminating or mitigating the risks of small bribes and ensure your internal systems are reasonable and proportionate to the risks of small bribes. The strategy can follow three main streams to tackle the deep rooted factors that create demands for small bribes: (1) internal actions through an anti-bribery programme; (2) modification of business processes; and (3) external activity working largely through collaborative action.

- **Implement a programme to counter small bribes:** The anti-bribery programme comprises the company's detailed policies and procedures to counter small bribes and these should be designed and implemented proportionate to the risks shaped by the risk approach of the company. Section 4 describes the suggested core components of the programme for countering small bribes.
- **Modify business processes:** Consider if business processes can be changed to demands for small bribes. The risk assessment may identify 'pinch-points' for small bribes such as agents suspected of paying small bribes or functions where officials routinely demand bribes. The 'pinch-points' can be reviewed to consider if the company can eliminate the interaction or third party. Flexibility can be built into schedules allowing for delays resulting from refusal to pay small bribes. This flexibility can be targeted to address 'pinch-points' and support actions to eradicate demands. A radical solution may be to withdraw operations from an area, market or country.

- **Work in collaboration:** While the company may have ensured that the activities which it controls or influences are good practice and proportionate to the risks, even so, the measures may be insufficient to counter demands for small bribes based on factors which are deep-rooted and resistant to eradication. These factors can best be addressed through collaborative action and can tackle broad societal issues as well as working intensively on specific issues such as bribes in a customs function. Collaborative work can take various forms, including high-level advocacy, collective action, working with governments and civil society and community investments. Collaborative actions are described in section 5.

CASE STUDY: WITHDRAWING FROM INVESTMENT

IKEA announced in 2009 that it would make no further investments in Russia because of ever present bribery demands. Apparently according to the media, IKEA had supposedly suffered particularly from the authorities consistently blocking store openings at the last moment. [Source: <http://www.bloomberg.com/news/2011-03-01/russia-repels-retailers-as-ikea-halt-curtailed-medvedev-bric-goal.html>]

CASE STUDY: REGULARISING INFORMAL PAYMENTS

A company was operating in a market known for high corruption and also for violence. It had to provide security to its installations and as the local company's security officers were not allowed to carry guns, it was informally paying police officers to carry out this work. The payments were made by way of cash cheques to the officers' accounts. The Group office flew out senior executives who examined the situation in detail, negotiated a formal contract with the police and arranged for fees to be to a police account. This resolved the issue of informal payments. One of the lessons from the exercise was the need for perseverance when eliminating small bribes.

4.3 ASSESS THE RISKS OF SMALL BRIBES

Principle 3: Risk assessment is the basis for the design of the strategy and programme to counter small bribes.

The company identifies and assesses the risks that small bribes are demanded or paid in its activities and operations, and the factors that cause them.

Risk assessment is the basis for the design of the strategy and programme to counter small bribes and collaborative work to address underlying factors for demands. The aim of risk assessment is to identify the risks from small bribes, assess which are significant for your company and then design and apply controls to counter the risks and mitigate risk factors. You may have already tailored your anti-bribery policies and procedures to counter small bribes but regular risk assessment will enable you to judge whether these controls are effective as well as identifying where controls need to be strengthened. Document the process undertaken in the risk assessments, as the information will be needed to guide further assessments and will be important to refer to if an incident occurs.

SIGNPOST: GUIDANCE ON RISK ASSESSMENT

Use the publication *Diagnosing Bribery Risk* as a guide when designing your risk assessment process. <http://www.transparency.org.uk/our-work/publications/10-publications/678-diagnosing-bribery-risk>

Document the process undertaken in the risk assessments, as the information will be needed to guide further assessments and will be important to refer to if an incident occurs

Understand the potential consequences of paying small bribes

Before undertaking the risk assessment, make sure you understand the range of potential consequences as you will need to identify those relevant to your business and assess their potential impacts. Small bribes are one of the most problematic areas of countering bribery and the potential consequences are described below.

Legal

- **Criminal prosecution:** Small bribes, including facilitation payments, are illegal in most countries, and companies paying small bribes face risks of action both under laws in local jurisdictions as well as those with extra-territorial reach such as the UK Bribery Act. Where small bribes are paid repeatedly and are systemic, they may attract the attention of authorities. Criminal penalties can include corporate fines and imposition of monitors. Other laws can be applied such as the UK Proceeds of Crime Act 2002, the Books and Records provisions of the FCPA and regulatory powers such as those of the UK Financial Conduct Authority.
- **Civil action:** There can be risk of civil action by the authorities and shareholders.
- **Conviction:** A conviction for paying small bribes is not differentiated from large bribes in many jurisdictions. As such the financial penalties for companies may well be substantial. Conviction for a company may also have other effects such as debarment from public tenders.
- **Settlement:** Jurisdictions that provide for Deferred Prosecution Agreements such as the US and UK may impose substantial penalties and terms on the company including disgorgement of any profits made from the alleged offence, compensation to victims, payment of the prosecutor's costs changes to the anti-bribery programme, and appointment of a monitor.
- **Legal risks for individuals:** Senior officers as well as individuals connected to the bribery may face personal criminal consequences.
- **Business costs:** The business costs of managing investigations and prosecutions can be substantial and include both internal costs and legal fees. Incidents can be a distraction for management and use substantial management time.

Reputational damage

- **Market and financing issues:** Convictions for, or allegations of bribery can cause a company to suffer reputational fallout that affects shareholder confidence, market value and may increase the cost of access to financing.
- **Loss of confidence by business partners:** Customers and other third parties will not wish to be associated with a company suspected of systemic bribery, whether large or small bribes.
- **Vulnerability to bribe solicitation and demands:** If a company is known to be paying small bribes, this may encourage bribery demands, including larger bribes.

Undermining the anti-bribery commitment

- **Mixed messages:** If the company tolerates payment of small bribes, this sends a confused message to employees, agents and other contacted parties and undermines the ability of the company to hold to a zero toleration of bribery.
- **Vulnerability:** Companies known to be acquiescent in paying small bribes are more likely to face demands for larger bribes.

Operational impacts

- **The costs of small bribes may be substantial:** Small bribes can add up to large sums as they are often used systemically for repeated transactions. As small bribes are often hidden, unreported or driven underground by a no-bribes policy, the frequency and financial impact on the business may be underestimated.
- **Markets do not operate fairly:** Market competition will not be based on price, quality, delivery and service but on opaque and illegal payments made to gain advantage including expedited service or preferential treatment.
- **Red tape and bureaucracy proliferate:** Argument is often made that small bribes oil the wheels of commerce enabling corners to be cut, red tape to be circumvented and processes made faster. A World Bank study found that companies that pay bribes are likely to spend more time with bureaucrats negotiating regulations, and corrupt officials tend to target their demands on companies that have paid bribes before.³

3. *Does Grease Money Speed Up the Wheels of Commerce?*, Shang Jin-Wei and Daniel Kaufmann, World Bank, December 1999.

Employees placed at risk

- If the company does not tackle small bribes by attempting to deal with the underlying causes and also support its employees in resisting demands, employees may be placed in situations of personal risk. These risks may extend into the personal lives of employees living in countries where small bribes are commonly demanded.

4.3.1 Gather information

The next step in the risk assessment is to gather information to identify where small bribes are happening or could happen, and find out how employees and third parties are dealing with demands when made. Your company will know from its own experience where small bribes are most likely to be demanded but a methodical approach to risk assessment will make sure you do not overlook additional risk areas. It is important to use the knowledge of those operating in difficult countries for small bribes: management, employees, third parties and local stakeholders will know where the risks of such payments lie and be able to bring intimate local knowledge. The risk assessment process could be assigned to the country business unit to carry out. This can have the benefit of not only bringing local knowledge, but also bringing the local management into the process for developing the controls for countering small bribes and building their commitment. Surveys and questionnaires can be supplemented by face-to-face interviews which will also bring out areas which people may be reluctant to put into print. By interviewing people operating locally, their support and buy-in will be obtained. Elimination of entrenched demands starts with analysis and research.

Surveys and questionnaires can be supplemented by face-to-face interviews... By interviewing people operating locally, their support and buy-in will be obtained

WAYS OF IDENTIFYING THE RISKS OF SMALL BRIBES

- Interviews and surveys of employees in local markets and key functions such as marketing, procurement, operations, logistics, business development and recruitment
- Brainstorming and facilitated group discussion workshops
- Review of whistleblowing and hotline use
- Review of books for recorded payments
- Review of internal audit reports
- Analysis of past incidents and their impact
- Self-assessment
- Survey all relevant stakeholders to complete a simple online survey
- Web and literature searches
- Interviews of peer companies
- Advice from professional advisers – accountants, auditors, legal, anti-bribery consultants
- Discussions in countries with the local Embassy or High Commission, Chamber of Commerce, NGOs such as Transparency International chapters or Global Compact Networks
- Community interviews and focus groups

Elimination of entrenched demands starts with analysis and research

The interviews and surveys will aim to give you sufficient information to make an assessment of the risks of small bribes. Some questions to consider at this point are:

The current situation

- Where do small bribes happen? (see Table 1 in Section 2 – not an exclusive list)
- How do the actions of other companies influence the level of demands – are they feeding demands or helping to reduce demands?
- What are the risk factors that make small bribes being demanded and paid more likely (see below for more on this)?
- What are the 'pinch-points' where bribes occur?
- What are the frequency, size and forms of small bribes?
- Do the small bribes link to or pave the way for other corruption or risk?
- Are small bribes being paid repeatedly and systemically to further business operations?
- What are the characteristics of the transactions of small bribes and can we derive underlying patterns?
- Is there any particular vulnerability for our sector, company or processes?

- What experience can we draw on from our company's activities?
- What do the local communities think about us?
- Do we have a public perception of paying or not paying bribes?

Opportunities to eliminate small bribes

- Are there ways to avoid the 'pinch-points' for small bribes or do we have no alternative route or way of working? How could demands be avoided by changing business processes such as no longer using agents or greater local focus?
- What are the opportunities for changing these underlying factors that create demands?
- What have been our and others' successes in countering small bribes?
- Are there any suggestions, procedure improvements or mitigation methods which we should note for later use?
- What is being done by others to tackle the issues and with whom could we work?
- What could be the priorities for action?

When interviewing people about risks from small bribes, explore and test their comments to make sure they are revealing what is really happening – they may be uneasy about speaking about bribery or be telling you what they think you want to hear.

4.3.2 Identify the risk factors for small bribes

Risk is the possibility that a small bribe will occur and risk factors are circumstances that could make it more likely that bribery will occur. Knowing the risk factors will be important in shaping how the company decides to work collaboratively. The risk assessment process will look mainly at the inherent external risk factors but internal factors should also be kept in mind. Examples of risk factors commonly identified for small bribes are shown in Table 2 below.

TABLE 2: EXAMPLES OF RISK FACTORS

External risk factors	
Countries of operation	Countries with high levels of corruption.
Bribe demanders	High level of corruption in government functions such as customs, clearance agents, border control officers, police and judiciary. Also can occur in the private sector for activities such as logistics, parcel delivery, installation of telephones or broadband, water power supply or other services where speed is needed by the customer or supplies are restricted.
Inadequate public sector processes	Government fees are not defined or published, public officials are poorly paid or are not remunerated for some activities such as travel or overtime, administrative processes are inefficient, inconsistent or not automated, red tape is common.
Company and its employees have interactions which increase vulnerability to demands	Bribes are demanded when the employee, company or third party is vulnerable. Examples are perishable or critical items in customs or transit, travel deadlines, pressures on employees such as tight operating deadlines, shipping schedules or production targets, critical licenses and planning approvals, personal issues such as family pressures. Bribe demanders can create or heighten vulnerability by inventing bureaucracy or fabricating infringements of laws or standards such as visa rules, health and safety standards or traffic laws.
Third parties	Your third parties do not live up to your standards - this can because of ingrained practices, their services are built on use of small bribes, or lack of alternative choices for specific third party services.
Internal risk factors	
Internal reporting structures	A diversified global organisational structure may weaken the implementation of controls you put in place to counter small bribes. Conversely, a highly centralised organisation may become remote from what is really happening.
Employees	Employees are vulnerable e.g., exposed by operating alone, allowed to use petty or other cash, feel unable to comply with the company policy and pay small bribes out of their own pockets.

The risk assessment process will look mainly at the inherent external risk factors but internal factors should also be kept in mind

4.3.3 Evaluate and prioritise the risks

The next task after information gathering is to assess and prioritise the risks. The assessment of risks can be kept broad, as comparative risks of countries and transactions cannot be accurately assessed, and also the process may become unwieldy. The result can be a ‘heat map’ or matrix grading business functions, units, transactions and third parties into high, medium and low risk. Qualitative or quantitative grading can be used. Qualitative grading emphasises reliance on the judgement of the assessor. Quantitative grading can be valuable for assessing small bribes where the risks are pervasive and expected to occur with a high and relatively predictable frequency (and with relatively predictable homogeneous results). However, care should be taken that quantitative assessment does not lead to a false level of confidence in the accuracy of assessments. Table 3 illustrates use of a matrix for qualitative assessment of business or third party functions against two risk factors. This could form part of an automated risk evaluation system which maintains data on third parties and applies risk criteria to enable assessment and monitoring.

Residual risks are an issue for small bribes

The risks that remain after the anti-bribery controls are implemented (‘residual risks’) can be a significant issue for countering small bribes which are often the result of embedded corruption. No level of investment in controls will reduce the risk of bribery to zero, and any residual risks should be reviewed by senior management and a report made to the Board with recommendations on how the company could mitigate the risks. It may be possible to address residual risks in ways such as applying more anti-bribery resources, changing business processes, working around ‘pinch-points’, withdrawing from a market or activity or working with others through collective action and local initiatives.

TABLE 3: EXAMPLE RISK ASSESSMENT OF BUSINESS UNITS AGAINST RISK FACTORS

Business unit / third party	A: Exposure to high risk countries	B: Exposure to bribe demanders	Risk rating
Supply chain management	Dealings in countries scoring [xyz] ⁴ or less in TI CPI	Customs, ports, canal authorities	High
Shipping fleet	Dealings in countries scoring [xyz] or less in TI CPI	Customs, ports, canal authorities, border officials	High
Corporate affairs	Travel to some countries scoring [xyz] or less in TI CPI	Border officials, cash payments or per diems for services of accompanying officials	Medium
Marketing Unit	Travel to some countries scoring [xyz] or more in TI CPI	Border officials only	Low
Clearing agent	Operates in high risk countries scoring [xyz] or less in TI CPI	Customs, ports, canal authorities	High

The outcome of the risk assessment process will be an understanding of the forms of small bribes likely to be encountered by your company, their characteristics, where they occur, the factors that make such bribes more likely, their frequency, the potential effects and consequences for your business, and a comparative assessment and prioritisation. The map of risks and their prioritisation will provide the basis for reviewing and designing your controls to counter small bribes as well as developing collaborative action to deal with the unyielding forms of small bribe demands.

4. Many companies set a numerical threshold based on the Corruption Perceptions Index (CPI) at which they consider countries become higher risk; it should be noted that other tools and indices are available to complement the CPI such as TI’s Global Corruption Barometer that can help to give a more sophisticated assessment.

The risks that remain after the anti-bribery controls are implemented (‘residual risks’) can be a significant issue for countering small bribes which are often the result of embedded corruption

In applying controls on a risk based approach, a matrix can be helpful

The application of controls to employees and third parties across the business should be based on the assessed risks but due diligence and monitoring should also include sampling of lower risk business processes and third parties to provide a further check. In applying controls on a risk based approach, a matrix can be helpful, listing the controls such as communications and training and their use in functions, third parties and transactions according to level of risk.

CASE STUDY: RISK-BASED APPLICATION OF TRAINING

A global oil and gas company carried out risk assessment on 90,000 employees and as a result gave face-to-face training to 12,000 employees assessed to be at high risk from demands for small bribes and another 45,000 with medium risk had online training.

4.4 IMPLEMENT THE PROGRAMME TO COUNTER SMALL BRIBES

Principle 4: The company implements a programme to counter small bribes

A programme of internal controls is implemented comprising detailed policies and procedures to counter small bribes.

A senior manager should be given responsibility for developing and implementing the programme and can be supported in this by a cross-functional team. In addition, local sub-teams can be valuable as they will know the issues on the ground and the process will gain commitment or 'buy-in' which may be useful later when the new procedures are rolled out.

At the same time as developing the new procedures for countering small bribes, consideration should be given to how to roll-out the procedures to its employees and third parties. The launch communications can emphasise the importance the company attaches to the policy of not paying small bribes and the new procedures. There will be suitable messages from the top, globally and at local country and business unit levels. Departmental managers in functions exposed to small bribe risks can be part of the delivery and given training and information to enable them to deliver messages to their employees and third parties. Support functions will need to be involved in developing the plans so they are ready and resourced to take part in the implementation. Meetings can be held with intermediaries and key suppliers to advise them of launch of the programme and what it means for them.

Communications and training will need to be ready for employees and third parties. This may need a phased approach for some aspects such as training or internal audits to keep the allocated resources within practical levels. Communications can include cover information about where employees and third parties can get advice or report concerns.

External communication of the company's actions should be considered as this can build your company's reputation for not paying bribes. Reputation takes time to build and will be achieved by communicating publicly your commitment not to pay small bribes and by the actions of your company, employees and third parties as well as collaborative actions.

The core components of implementation of internal controls to counter small bribes are described in the next sections. These are: communication and training, managing third parties, internal controls and planning for incidents.

Communication and training are vital for giving employees the knowledge, skills and confidence on how to recognise, resist and eliminate demands for small bribes

4.4.1 Communication and training of employees

Principle 5: Communication and training are provided to employees

As part of the programme, communications and training make clear the company's policy of prohibition of small bribes and give requisite information and advice to employees on how to anticipate and resist demands, seek advice and to report concerns or instances of small bribes.

Communication and training are vital for giving employees the knowledge, skills and confidence on how to recognise, resist and eliminate demands for small bribes. Companies invest a huge amount in their employees in many ways and will no doubt want to avoid risking this investment by employees becoming involved in the payment of bribes which may lead to personal stress and disciplinary action and possibly the loss or the termination of employees. Companies responsible for providing practical support to their employees to counter risks of small bribes, especially where there may be risk to their personal safety or liberty. Small bribes can intrude regularly into the lives of employees living in countries where corruption is prevalent.

As part of the internal communication of the overarching anti-bribery programme, relevant employees should receive information on the programme and may be required to sign periodic (e.g. annual) certifications that they have read it, understood the requirements and will comply with the programme. Details on the prohibition and prevention of small bribes should form part of this communication and certification. Communications and training on small bribes should be tailored according to the identified risks and aim to ensure that employees understand the risks, know what the company expects of them and how to recognise and resist any demands for bribes. An advice hotline can provide a further route for communicating information about the programme to employees who have concerns, and a confidential or anonymous whistleblowing channel can be important in detecting issues and incidents.

Give employees the skills and knowledge to prevent and resist demands

Tailored training should be given to employees identified as being at risk of demands for small bribes to make them aware of the typical demands for small bribes, when and where they could happen and how to handle them. The emphasis in the training will be on providing the practical skills and knowledge to resist such demands. The training can be both face-to-face or on-line and use a variety of approaches including on-line interactive modules, role playing, break-out groups and group discussions. If employees are properly trained about how to deal with various scenarios, their confidence will likely be projected to an official contemplating a demand.

Case studies, scenarios, dilemmas and red flags can be used in training, drawn where possible from the company's experience. Incorporating experienced employees in training groups can help to bring extra relevance and a degree of reality to the training. Red flags are especially useful in training support functions that have to check or monitor for risk of bribery. A list of red flags is given in Appendix 2. Emphasise to employees that they will not be penalised for refusing to pay small bribes even if this results in delay and costs. Face to face or online training can be supported by hardcopy resources.

Training attendance by employees should be documented on their files and refresher training given periodically. The input and comments of those taking part in training should be captured as this can be valuable in contributing to the company's knowledge about risks and ways of tackling bribe demands.

Providing guidance on how to recognise and resist small bribes

It will help employees if you can warn them about small bribe demands they are likely to meet when travelling or in certain business interactions. This will prepare them for the particular scenarios, and supply the information and resources needed to anticipate and counter demands. The information can include the following:

- The background for visits and transactions, to find out when and where bribes are likely to be demanded whether at an airport or port, customs or a local planning office
- Local laws, regulations, requirements and rights so these can be referenced when resisting bribe demands from officials
- Guides to the ports, sites and government functions identifying where demands are demanded, and the recommended counter measures to use

Training attendance by employees should be documented on their files and refresher training given periodically

- What authorisations or permits are needed
- Past experiences by employees and how they dealt with the demands; what worked and what did not
- Details of the main contacts in the event of an issue such as the senior official in a ministry or the British Embassy.

Resources you can provide to employees and agents can include:

- Wallet cards, in local languages, if possible, explaining the company's strict policy on payments and the need to comply with laws
- Smartphone apps providing country background, likely risks, contact details
- Hotline to get advice
- Guides to where bribes are likely to be encountered in specific locations such as an airport, customs, port or canal.

A demand for a small bribe will have to be judged by the employee according to the circumstances and the employee will have to decide, often under pressure, whether there is a genuine threat to life, limb or liberty and in which case this does not warrant making a stand. This is why tailored training and role playing are vital in preparing employees to resist demands. Negotiation is an important skill to be learned and practised and the box below sets out the steps for countering a demand for a small bribe. Employees may have to accept significant inconvenience in resisting.

Tailored training and role playing are vital in preparing employees to resist demands

MODEL NEGOTIATION STEPS FOR RESISTING DEMANDS

If the employee feels it is safe to do so some or all of the following steps can be followed when a demand is made.

- Use negotiation skills and remain calm despite provocation or harassment
- Ask a colleague or fellow traveller to stand nearby as this may discourage an approach if the discussion is being listened to by another
- If the discussions are in your facility such as a meeting room or on your ship consider video recording all transactions and inform the official that you do this as standard practice
- Take detailed notes of conversations – with whom and what was said
- Keep any papers or documents given to you
- Clarify what is being asked for
- Question the legitimacy of the request and ask the official where the requirement for the 'fee' is displayed or stated
- Refuse to pay if the official cannot supply official validity of the 'fee'
- Make the point in a personalised and soft way that making such a payment would cause problems for the employee: 'I'll get into real trouble' etc
- If the official still demands the payment, ask to see the official's supervisor
- If that is refused, or if the supervisor also asks for payment and it is clear there will be no movement by the officials on the demand, offer to pay the fee subject to being given an official receipt - a formal document on official paper that identifies the official's name and relevant identification number if appropriate
- If the official refuses to provide a receipt, restate willingness to pay the fee but only with a receipt
- If no receipt is forthcoming, telephone the local embassy and make clear to the official demanding the bribe that this is being done and the employee will wait until the official approves or makes the action which is the official's duty to carry out
- Having exhausted all methods and still not having gained approval from the official then, with the prior support given by management for such an outcome, decide to accept the consequences of delay or loss of goods. However, if the demand is accompanied by a threat to life, limb and liberty of the employee or others working in a country then the employee should not resist the demand
- If possible, get written statements corroborating the demand of a payment as this may be needed if the official claims the employee initiated the attempt to bribe
- Report the incident to the company as soon as possible
- Record any payment made accurately in the accounts with a clear description of its purpose.

Tighten up the procedures and training for preparing documents so that they are accurate and complete, giving no room for officials to demand a bribe to overlook the deficiencies

Ensure paperwork is accurate and complete

Tighten up the procedures and training for preparing documents so that they are accurate and complete, giving no room for officials to demand a bribe to overlook the deficiencies. If you are shipping goods on behalf of third parties, make sure they too have completed their paperwork properly. This is especially important as customers, even if the mistake is theirs, may be unforgiving about the delay in the shipping schedule and expose your company to demands for small bribes. Endeavour to make your customers understand the importance of accurate documentation and that they cannot expect remedies to restore schedules to be payments of small bribes.

Make the anti-bribery programme for small bribes relevant at local level

Small bribes are demanded in many different ways and circumstances. Local approaches to resist them are needed. Approaches include:

- Ensure country and business unit managers in relevant countries understand the issue and lead work on resisting small bribes
- Get senior executives to visit the country to take part in training of employees and to meet senior government representatives and local NGOs to encourage action on dealing with issues of small bribes
- Require senior local management to communicate the commitment to eliminating small bribes
- If your company has an advice and whistleblowing channel, extend this facility globally.
- Provide tailored local communications and training on small bribes based on local risk assessments
- In training and communications, use the local languages of the main countries of operation
- When local customers carry out due diligence on your company about integrity, explain how you counter bribery including small bribes
- Work with local companies to draw on their experience and reputation: for example, a foreign company operating in India used the training videos of one of India's largest companies
- Train the support functions such as Legal, Compliance, Finance, Human Resources Operations, and Logistics. They need to understand the issues of small bribes, how the controls are designed and implemented and their role and contribution in countering small bribes. Training can be cross-functional as this will allow sharing of knowledge and creativity on approaches as well as building a uniform global approach.

SIGNPOST: DOING BUSINESS WITHOUT BRIBERY TRAINING MODULE

Transparency International provides a free training module with comprehensive anti-bribery training, including in relation to facilitation payments, designed by leading experts in the field. It also enables companies to benchmark their own training programmes against a best practice standard.

<http://www.doingbusinesswithoutbribery.com/>

4.4.2 Prevent small bribes being made by third parties

Third parties can be significant risk areas for small bribes as they may be relying on paying small bribes when acting on your company's behalf

Principle 6: Attention is given to countering third party risks

As part of the programme, the company has in place appropriate procedures for third parties including due diligence, contract terms, communication, training and monitoring.

Third parties are a significant risk

Third parties can pose a significant risk as they may be relying on paying small bribes when acting on your company's behalf.⁵ Companies cannot rely on their internal anti-bribery measures being sufficient and turn a blind eye to the activities of their third parties, not least because of the provisions of section 7 (and 12) of the Bribery Act 2010. It is insufficient merely to communicate your policy to a third party, insert a clause in the contract and leave it at that. Enforcement authorities are likely to look at the extent to which a company has acted to ensure that its agents and other third parties act properly and do not pay bribes including systemic use of small bribes.

5. Third parties include agents and other intermediaries, consultants, lobbyists, representatives, distributors, contractors and suppliers, joint venture and consortia partners.

The interactions with which your third parties are commonly engaged may expose them to demands for small bribes and these are likely to be systemic rather than one-offs. Agents are often engaged because of their expertise, knowledge and qualifications in dealing with official and bureaucratic processes such as customs and port authorities. Suppliers or others who are shipping on your behalf may depend on bribes to ensure that your goods are moved on schedule and clear borders and customs without trouble.

While your company may consider that it has adequate controls to counter small bribes for activities conducted by its employees, it can be difficult to achieve equivalent confidence in relation to third parties. Small bribes can easily be concealed, misdescribed or re-characterised on invoices or within a retainer or commission. Company employees are unlikely to be present when transactions are conducted by third parties.

Your company should ensure that it has implemented adequate procedures to ensure that your third parties are not relying on small bribes. The measures that you should consider implementing are described below.

Due diligence on third parties

Third parties should be assessed for integrity and any risks of bribery before appointment and then again at regular intervals. Appropriate due diligence should be carried out in relation to third parties who are assessed as presenting a relevant risk. The level of due diligence on contractors and suppliers should be based on risk assessment. The due diligence should include specific checks to find out how the agent or supplier handles demands for small bribes and if activities are reliant on small bribes. The list of red flags in Appendix 2 can be used as a basis for developing your list of due diligence checks.

Contractual requirements

It can be made a contractual requirement for third parties to comply with your anti-bribery programme, including prohibition of small bribes and require other third parties contractually not to engage in bribery. Contracts can be used to ensure responsibilities are spelt out, what is expected in relation to small bribes, the right to inspect books and audit and to conduct an audit or to terminate the contract in appropriate circumstances (e.g. where bribery is suspected).

Communications

Relevant third parties should be given communications setting out the expectations of them, a description of the company's anti-bribery programme with a specific reference to small bribes. Messages when meeting agents and other third parties and local management will have an important role in this. Communications may be tailored according to the type and size of the third party and the level of risks. For example, a brochure can be provided for agents and another for suppliers, using the main international languages or local languages in certain markets.

Training

Third parties can be given training on the company's anti-bribery programme, including countering small bribes. The training can be used not only to assist third parties to resist demands but as a process to learn about risks, identify concerns and obtain suggestions for improvements. It may be helpful to give tailored training to certain intermediaries such as key suppliers and third parties operating in sectors with high exposure to risks of small bribes (such as transport, forwarding and shipping contractors or where there is interaction with government officials). In-house contractors would typically be included in the standard employee training.

Monitoring

Systematic and regular monitoring can help to ensure that the third parties are not paying small bribes. Checks might include interviewing third parties judged to be high risk, about how interactions with government functions are handled. A company that knows its agents and key suppliers thoroughly is better placed to assess whether there are any weaknesses and how to deal with them. Managers responsible for third parties and relationship managers for suppliers can have an important role in this.

Annual certifications can be used to reinforce the commitment of agents and other key third parties and this will also have the benefit of bring the compliance message to third parties' attention annually.

Although audits can be made of intermediaries' books and records, it may be difficult to detect evidence of small bribes. However, such audits can be one of the most effective means of discouraging bribery by third parties, and auditors can be usefully guided by red flags.

Sanctions

If a third party is found to have breached your policy through regular use of small bribes, the relationship should be ended. If it is a one-off incident made through error then a review of the third party's integrity approach, procedures and other remedial actions should be sufficient but accompanied by a warning about the consequences of any repeat of the breach.

4.4.3 The internal accounting controls address small bribes

Principle 7: The internal accounting controls are designed to counter small bribes

As part of the programme, the company's internal accounting controls are modified and extended to counter small bribes.

Internal controls are the policies and procedures that help ensure that Board and management directives are carried out and meet the corporate governance policies of the company. The internal controls should provide the Board and management with reasonable assurance regarding the efficiency of operations, the reliability of financial reporting and compliance with applicable laws and regulations. In relation to small bribes, internal accounting controls should aim to provide assurance that:

- Payments of small bribes are prevented
- Payments for transactions and expenses are for what they are said to be and not a cover for payment of small bribes
- Transactions are documented so audits can be carried out
- When small bribes are paid they are:
 - Likely to be detected
 - Not mischaracterised or inappropriately recorded in the company's books and records
 - Reviewed by management
 - Reported to the Board
 - Reported appropriately to the authorities

Key features of internal controls are checks and balances in procedures and internal audit. The following aspects of internal controls are relevant to countering small bribes.

- **Segregation of duties:** Segregate duties to reduce the risk of collusion or error in authorisation, approval and recording of expenses or other payments or manipulation of records where evidence of small bribes may be hidden.
- **Authorisation and approval controls:** Procedures are implemented to ensure all transactions are authorised or approved by an appointed person, including thresholds for approval.
- **Supporting documentation:** There are effective procedures that ensure adequate supporting documentation and audit trails for all expenditures made on the company's behalf.
- **All expenses are recorded accurately in clearly categorised accounting codes:** Expenditures are charged correctly to accounting codes with precise clear titles.
- **No miscellaneous expenses:** No reimbursement to third parties for expenses categorised as 'miscellaneous' and audit of any expenses charged the code.
- **Responsibility is embedded across the company:** Reliance should not be placed just on procedures. Responsibility for countering small bribes should fall upon all who might be exposed to demands for small bribes. Their role is to resist payments, to contribute to improving procedures to counter small bribes and to live up to and promote the company's reputation for integrity and non-payment of small bribes.
- **Checks and audits:** The expense claim procedure should include checks and approvals to prevent small bribes being paid and claimed through subterfuge. Employees and third parties should be made aware that payments and expenses are closely monitored and audited and an environment created where they feel able to disclose any issues attached to their expense claims. Internal Audit should inspect and evaluate the company's operations, checking the effectiveness and efficiency of the control procedures for countering small bribes. The function should be trained in the risks of small bribes and how payments might be hidden in the accounts.

If a third party is found to have breached your policy through regular use of small bribes, the relationship should be ended

Key features of internal controls are checks and balances in procedures and internal audit

- **Cash payments eliminated or controlled:** Cash payments are an area of abuse for small bribes. Implement a policy of no cash payments but recognise this is not always possible in countries subject to strife and disorder. In such cases, provide safeguards with receipts that are clear and not scribbled. The policy should include no use of petty cash floats and avoiding cash payments. If cash per diems are being paid direct to officials to carry out inspections this informal process can leave the company vulnerable to demands from the inspectors for bribes. It might be possible to regularise this by a transparent contract with the government department which itself then deals with appropriate payments to officials. However, it may still be preferable to investigate if you can eliminate the issue entirely through alternative working methods. If cash per diems for officials are unavoidable then these should be paid against receipts and charged to a clearly titled accounting code. Consider whether it is appropriate to audit agents' books to detect any cash payments. The box below lists some accounting controls for cash payments.
- **Review and internal audits:** There should be periodic review of the effectiveness of the accounting controls to counter small bribes including reviews by Internal Audit.
- **Management and Board review:** Management should ensure that the internal control system for small bribes is implemented and effective. The Board should be given reports on the results of reviews.

Internal control checks for cash transactions to counter risks of small bribes

- Checks on cash payments and expenses for rounded sums
- Checks for recurrent cash expenses of similar size
- Expense transactions provide information to identify employee, recipient and purpose
- Payments or expenses for high risk interactions are given close scrutiny e.g. travel across borders, customs, ports, canals
- Per diems for employees allow no room for small bribes (though this will not prevent employees using their own funds)
- Receipts or other adequate documentation for payments
- Only official receipts with checks carried out to identify any self-created or forged documents
- Small petty cash floats are avoided and where necessary are kept small with use limited for defined purposes.

CASE STUDY: ELIMINATING INFORMAL DEMANDS FOR CASH

Context: An engineering company was constructing a gas pipeline crossing the country of a developing nation and as each stage was completed it needed certification by the state Oil and Gas Ministry. Officials refused to travel into the remote country to carry out the certification as they claimed they would not be remunerated by the Ministry for the extra time (and probably would miss out on other bribes paid in the capital). They demanded informal cash per diems.

Result: The company negotiated a contract with the Ministry to pay for additional remuneration to the public officials. The contract was transparent and checks were made to ensure that the sums paid reached the certification officials.

4.4.4 Prepare for managing incidents

Principle 8: Appropriate actions are taken if small bribes are detected

As part of the programme, the company has a procedure to deal with any incidents including investigation and review, disciplinary action and consideration of reporting the incident to the relevant authorities.

The company needs to have a procedure for handling incidents, including confirmed payments, allegations and suspicions

Implement a procedure for managing incidents

Even when there are effective procedures for countering small bribes, the risk of small bribes can never be reduced to zero. Employees may make mistakes through ignorance, negligence or inadvertence. Third parties may disguise the use of small bribes to carry out their work. The company needs to have a procedure for handling incidents, including confirmed payments, allegations and suspicions.

Such a procedure might include the following aspects:

- Responsibility for managing incidents is assigned to a manager
- Channels are provided for employees and third parties to seek advice if they have concerns about the nature of a payment
- A communications strategy is designed ready for use for incidents so the position can be communicated promptly and accurately to those with a material interest
- Incidents are reported as soon as possible to management or the legal department
- All bribery incidents whether large or small are properly documented
- The review process is fully and accurately documented
- All supporting documents are retained and the scope for destroying documents is minimised
- Accurate recording of detected bribes in the books and records in a designated accounting code
- Review by the legal department
- Investigation to determine if it is an isolated event or part of a systemic payment of such bribes
- Analysis of the payment and how such a payment could be countered in future
- The anti-bribery programme is improved as necessary
- Application of sanctions if appropriate to the employee or third party
- Reports are made to senior management and the Board on the occurrence, progress and outcomes of reviews and actions taken
- Consideration of appropriateness for reporting to the authorities, subject to Legal review.

Ensure any small bribes are recorded accurately in the books and records

If small bribes are made, through error or otherwise, they should be recorded accurately in the books. Recording an illegal act is undoubtedly an uncomfortable process for any company, but paradoxically it may be necessary in order to comply with other laws including anti-bribery, accounting, taxation and companies laws. As such records may constitute evidence of criminal conduct under the law of another country, companies may choose to refer to legal advice on how they should be recorded or documented. The UK Bribery Act does not specify recording of bribes but, without recording, it is unlikely that the company would be able to meet the SFO's guidance on self-reporting.⁶ Further, recording requirements are set out in both the Companies Act, UK tax legislation and there is also a false accounting criminal charge under the Theft Act which is commonly used in fraud and bribery cases.⁷ The US FCPA requires foreign or domestic issuers of securities registered on US stock exchanges to comply with its accounting provisions for Books and Records and Internal Controls.⁸ It should be noted that the FCPA's facilitation payments exception applies only to the FCPA's anti-bribery provisions and not to the accounting provisions. If companies do not record all facilitation payments properly in their books and records they could be liable under the FCPA's accounting provisions.

If paid through the company's books, the improper payment should be coded with a clearly titled accounting code. It is unlikely that a company would wish to have an expense accounting code starkly entitled 'bribes' but a title could be used so that the payments can be readily identified. Payments not involving cash paid through the company's books should be recorded in a register: these are such as small bribes paid by third parties, payments by employees out of their own pockets or in-kind benefits.

If companies do not record all facilitation payments properly in their books and records they could be liable under the FCPA's accounting provisions

6. Serious Fraud Office, 12 October 2012, <http://www.sfo.gov.uk/bribery--corruption/corporate-self-reporting.aspx>

7. Theft Act 1968, s. 17

8. Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A) and (B)

Accompanying documentation for such payments can include:

- Amount, when paid, where paid, paid by whom
- Where charged originally – e.g. in an agent's books or an expense travel account
- Details of the official or other counterparty and organisation to whom the payment or in-kind bribe was made
- Full circumstances of the payment
- Statement if it is an isolated incident or part of a system of payments
- Actions taken to resist the demand
- Official documentation and receipts if any
- Evidence and details of witnesses
- An analysis of the incident
- Reports made to Legal, management and the Board.

Apart from meeting statutory requirements, recording payments ensures an audit trail and can provide valuable data for analysis of where small bribes are occurring and help improve the anti-bribery programme.

Provide for self-reporting to the authorities

When an incident of small bribery happens or where there is suspicion of bribery, the company is obliged in many jurisdictions to report this to the authorities. The offence can be compounded by failing to report it, so it is important to take local legal advice. There is no legal requirement to make a report to the authorities in the UK (unless the relevant provisions of the Proceeds of Crime Act apply); however, the SFO has made clear that it sees self-reporting as part of the response by management to bribery incidents. In the case of a one-off infrequent or non-systemic incident of a small bribe, the company might decide to act internally but not self-report to the authorities. When a company does decide to self-report:

- The legal department or independent legal advisers should review all incidents of small bribes and advise on the reporting steps
- If small bribes are being paid routinely or systemically then these should be reported to the authorities
- For isolated, minor incidents, consideration should be given to making a periodic aggregated report of incidents to the authorities.

SERIOUS FRAUD OFFICE GUIDANCE ON SELF-REPORTING

"The fact that a corporate body has reported itself will be a relevant consideration to the extent set out in the Guidance on Corporate Prosecutions. That Guidance explains that, for a self-report to be taken into consideration as a public interest factor tending against prosecution, it must form part of a 'genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice.' Self-reporting is no guarantee that a prosecution will not follow. Each case will turn on its own facts."

Serious Fraud Office, October 2012

<http://www.sfo.gov.uk/bribery--corruption/corporate-self-reporting.aspx>

Apply sanctions when small bribes are paid

Zero tolerance approach

The approach to applying sanctions should be governed by a policy of zero tolerance of bribery which means the company should address any potential violations with due concern and consistency. A zero tolerance policy does not mean automatic dismissal or other severe response to the first or every incident. Employees and third parties will inevitably make mistakes or give way under the pressure of unexpected demands despite communication and training. Management will need to judge each case on the circumstances. An isolated payment of a small bribe made in error may require no more than a simple caution, a note on the file of the employee or third party and an explanation of how the employee or third party should have handled the demand. Wilful and flagrant abuse or systemic breaches of the policy should be dealt with due severity, including dismissal or termination of contract and potentially reporting the incident to the appropriate authorities. Disciplinary reviews and sanctions should be documented by the compliance team and in the personnel records. Review of implementation of the small bribes procedures and any issues should form part of the regular reporting made to management and the Board on implementation of the anti-bribery programme.

The SFO has made clear that it sees self-reporting as part of the response by management to bribery incidents

Wilful and flagrant abuse or systemic breaches of the policy should be dealt with due severity

Procedure for applying sanctions

There should be procedure for applying sanctions. The aim of the procedure will be to ensure:

- Consistency in reviews and application of sanctions
- Employees and third parties understand the procedure that will be applied in the event of an incident and the potential consequences
- That full and proper review is carried out of incidents or allegations
- That employees and third parties who are alleged to have made bribes are treated fairly
- Sanctions are proportionate and consistently applied
- The sanctions procedure is conducted according to the guidance of legal and human resources departments
- The company can show that it takes bribery incidents seriously and acts in an appropriate manner
- Sanctions, where merited, offer a genuine punishment and deterrent, and should include severe options such as dismissal and potentially reporting an employee to the authorities

CASE STUDIES: CAUGHT UNAWARES

1. An employee lost their departure card, paid a fine at the border but did not get a receipt. The employee later thought about it and realised it was an unofficial payment. The employee reported the incident to management.

2. An employee was travelling back from a large company convention held abroad and was in a long queue at the airport check-in desk. A representative of the agency organising the convention came up and surprised the employee by taking her to the head of the queue. Subsequently, the employee wondered how this favoured treatment could have taken place. Was it a formal agreement with the airport authorities or a 'special arrangement' by the convention organiser? She reported the incident to her management.

4.4.5 Monitor and evaluate

Principle 9: The company monitors the effectiveness of its programme to counter small bribes

The programme for countering small bribes is regularly monitored and reviewed

Monitoring is the way of checking that your strategy, procedures and collaborations are working, to detect any concerns or malpractice and to strive for continuous improvement. It is not only good management practice to ensure your programme is working effectively but if there is an investigation by authorities related to small bribes they will wish to see that you have implemented adequate procedures and taken appropriate measures. The monitoring exercises and their results should be documented. Rigorous and regular monitoring, including internal audits, is a message in itself, that the company is serious and vigilant about the issue of small bribes.

The results of monitoring should be reviewed regularly by senior management and reports on the results made to the Board. Consideration should be given to reporting publicly on the monitoring procedure and the results for key indicators.

A monitoring procedure might typically cover:

- The effectiveness of implementation of the strategy and programme and any collaborative actions
- Assessment of the extent to which employees and third parties exposed to risk of demands for small bribes understand the company's policies and procedures relating to small bribes, know how to handle situations when confronted with demands and where they can get advice and report concerns
- Periodic confirmations from employees of compliance with the procedures for small bribes
- Annual certification by country and business unit managers that the procedures are implemented and assessed as working
- Use of advice and whistleblowing channels
- The effectiveness of internal accounting controls
- Continuous monitoring of high risk interactions and third parties

The monitoring exercises and their results should be documented

- Forensic analysis to determine patterns of irregular payments corresponding to small bribes
- Review and internal audit of high-risk transactions, books and records
- Independent external assurance

The review process can use:

- Red flags and protocols (a list of red flags is given in Appendix 2)
- Surveys of employees and third parties to get their views about the issues of small bribes, the support from the company and areas that need attention or could be improved
- Consultation with stakeholders in the markets of operation to obtain external opinions about the way the company's employees and third parties operate and whether there is any perception that bribes are being paid
- Requiring those employees assessed as at high risk of being exposed to small bribes demands to certify annually that they know of no bribes having been made or received

4.5 INFLUENCE THE OPERATING ENVIRONMENT

Principle 10: The company acts strategically to influence the corruption environment in which it operates

The company accepts responsibility for addressing entrenched factors that lead to demands for small bribe, for example by collaborative working and investing in communities.

Companies need to address the structural factors that lead to demands for small bribes

The factors that create demands for small bribes are likely to be deep-rooted – involving poverty, poorly paid officials, grasping senior officials and politicians and institutional corruption as well as corrupt companies seeking to gain advantage. While a company may have taken care to implement appropriate internal controls these alone may be insufficient when confronted by embedded corruption based on extortion and coercion. Companies should consider how they can address the structural factors that lead to demands for small bribes and this can best be done by working in collaboration to achieve fundamental change. Work can be at macro level – discussions with governments and addressing societal issues such as poor pay - or more commonly, at micro level tackling an issue in depth in a particular government function or process.

CASE STUDY: INDUSTRY ASSOCIATION OFFERS CONFIDENTIAL CHANNEL FOR ACTION ON LOCAL CORRUPTION

‘The British Chamber of Shipping offers to act as the conduit for passing on information on local corruption to the SFO and the local British Embassies or High Commissions. This may be useful where a company is reluctant to work with competitors (primarily because of competition law sensitivities) or be prepared to draw attention directly to the local corruption because of possible reprisals.’
BCS Guidelines to the UK Bribery Act 2010

Collaboration can take various forms:

- Collective action by companies working together in sector initiatives or groups shaped by an issue such as tackling corruption in a particular port
- Multi-stakeholder collaboration involving partners such as civil society and government departments
- Integrity pacts: these are collective agreements by companies and public departments and overseen by an independent monitor to prevent bribes in a function, process or project. They have been used extensively in certain parts of the world, usually during public procurement processes
- Community ventures: a company works in partnership with a civil society organisation on a specific issue or contributes to a community or civil society anti-corruption initiative.

CASE STUDY: THE MARITIME ANTI-CORRUPTION NETWORK

The Maritime Anti-Corruption Network (MACN) is a unique global business network in the maritime industry set up to work toward a vision of a maritime industry free of corruption that enables fair trade to the benefit of society at large. As a global business initiative, MACN believes that sustainable, transformational change requires multi stakeholder collaboration, that collaboration must provide win-win solutions to motivate and incentivize all stakeholders to contribute, and that business itself must adopt strong anti-corruption management practices.

Established in 2011, and formalised in 2012, MACN is comprised of vessel -owning companies within the main sectors of the maritime industry and other companies in the maritime industry including cargo owners and service providers. Members have adopted the MACN Anti-Corruption Principles and activities include communicating progress on implementation, sharing best practices, and creating awareness of industry challenges.

Nigeria pilot project

MACN is collaborating with the UN Development Programme (UNDP) and the UN Office on Drugs and Crime (UNODC) to design and implement a pilot project in Nigeria which aims to reduce and prevent corruption in ports. The project is executed by local authorities with the support from a national anti-corruption agency – the Technical Unit on Governance and Anti-Corruption Reforms (TUGAR). After gaining official commitment from the government, 70 assessors, recruited from the public sector and from NGO's, were trained in 2013 in corruption risks and research methodology. The process resulted in a study and an integrity plan. The integrity plan was launched in Nigeria end of 2013 including actions such as integrity training, reducing manual handling and establishing a formalised complaint mechanism.

Collective action is an important way in which companies are seeking to achieve change. Initiatives can undertake a variety of activities including:

- Process based action: Companies join together to address a particular issue of small bribery such as cargo handling or customs
- Analysis and research
- Advocacy: Communications and activities to raise public awareness of issues of corruption related to small bribes and to pressure the authorities for change
- Benchmarking: Exchanging experience and knowledge and advancing practice
- Joint representation and discussions working with competitors in talks with government officials about issues
- Process change – this is discussed below.

A key tool in collaborative action is obtaining changes in processes so that opportunities to extract small bribes are removed. This can be achieved in ways such as:

- *Standardising and simplifying*: Pressing for clarity of procedures and reduction in red tape: unclear procedures can be exploited by officials to create reasons for payments
- *Reengineering and automation of government processes*: Encouraging use of new systems and technology to remove officials from processes, and automate decisions and transfer of payments - working with civil society organisations can be helpful in obtaining progress
- *Transparency of rules and procedures*: Public functions and relevant private sector functions should be encouraged to publish their rules and charges; this removes uncertainties which can be exploited, allows companies and the public to know their rights and enables them to stand up to demands for bribes
- *Contracts for non-standard services*: If public officials demand money or other benefits to cover additional services or to compensate them for lost income, expenses, poor salary or overtime, formalise the arrangement by a transparent documented contract with the public body

Collaborative action is potentially a powerful approach to allow companies working together to achieve results they could not obtain on their own

Collaborative action is potentially a powerful approach to allow companies working together to achieve results they could not obtain on their own. However, the extent and resilience of corruption associated with small bribes should not be underestimated. Change can be made but it may take considerable time, involve sustained dedication on the part of those involved and recognition that there may be setbacks on the route. For example, politicians or officials important to the success of the work may lose office or be removed by corrupt vested interests.

CASE STUDY: COMMITTEE TO ADDRESS FACILITATING PAYMENTS (CAFP): COLLECTIVE ACTION GROUP WORKS TO ADDRESS UNDERLYING ISSUES

A few years ago a number of large global companies came together to share experiences, identify high risk areas for small bribes and collectively determine how they might in a thoughtful, proactive and appropriate manner address the issue. The result was the formation of a global steering team and a decision to form country committees that would primarily involve in country representatives, professionals and business related organizations.

The first and most active committee has been in Indonesia. Over a relatively short period of time local representatives of over 35 multinational organizations became involved with successful meetings being held with the different business chambers, the Indonesian chapter of Transparency International and the Indonesian anti-corruption organization, KPK. The focus of the effort remained at all times to not just talk about corruption and bad effects, but to come up with specific and detailed recommendations that would if implemented reduce the risk of facilitation payments being demanded or offered.

Two proposals that were developed and have been presented to high level government officials include a plan to implement official weekend customs clearance at a minimum of at least one Indonesian point-of-entry (proposed Jakarta). Another proposal included having the Director General of Immigration issue a communication that clarifies for companies and immigration offices throughout Indonesia key definitions such as what actual 'work activities' are allowed under specified work visas.

APPENDIX ONE: CHECKLIST

This section provides a self-assessment checklist aligned to the ten principles and good practice set out in this guidance. The checklist is intended to prompt thinking about the areas to be considered in designing and implementing a programme to countering small bribes. It should not be used as a 'tick-box' for validation of your anti-bribery programme for countering small bribes. **It is emphasised that the checklist is only a guide, and the scope and depth of your programme to counter small bribes will depend on the particular circumstances of your company.**

Principle 1: Ensure a supporting culture of integrity

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
1	Has your company made a formal commitment to integrity and ethics?							
2	Does your company have a public policy of prohibition of bribery in any form?							
3	Does the policy include a commitment not to penalise employees who refuse to pay bribes?							
4	Have you reviewed the existing overarching anti-bribery programme to check that it provides a suitable platform for designing controls to counter small bribes?							
5	Do the Chair, Board and senior management provide 'tone from-the-top' to further the integrity culture and the policy of prohibition of bribery?							

Principle 2: Commitment to eliminate small bribes

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
6	Has the Board committed to a specific policy for prohibition and elimination of small bribes?							
7	Has the Board committed resources to support the programme for countering small bribes?							
8	Does the commitment to eliminate small bribes provide for delays and costs in your operations to allow room for refusing bribes?							

9	Does the policy allow small bribes to be made when there is a genuine threat to life, limb or liberty?							
10	Does your policy statement provide examples of small bribes?							
11	Do you have a strategy for countering and eliminating small bribes?							
12	Have you committed to implementing a programme to counter small bribes?							
13	Do you modify business processes to counter small bribes - e.g. modify or end use of agents?							
14	Do the Board and senior management provide 'tone-from-the-top' to eliminate and counter small bribes?							
15	Has the Board agreed that the company has a responsibility to work collaboratively in societies and markets to eliminate small bribes?							

Principle 3: Assess the risks

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
16	Are the results of risk assessments for small bribes used as the basis to design your strategy and programme for countering small bribes?							
17	Is risk assessment a continuing procedure?							
18	Do you document the risk assessments?							
19	Have the business functions at risk from small bribes been identified?							
20	Have the third parties at risk from small bribes been identified?							
21	Have you identified and reviewed the provisions of laws relevant to small bribes including local laws?							
22	Have you identified and assessed the risk factors leading to demands for small bribes?							
23	Have you surveyed and interviewed employees likely to be at risk of receiving demands for small bribes?							

24	Have you surveyed and interviewed informed entities and people about the issues and risks related to small bribes?							
25	Have you reviewed your internal records for past incidents of small bribes including those recorded in your books and records and issues raised by employees and third parties?							
26	Have you drawn up a prioritised risk map for small bribes based on the results of your initial surveys and research?							
27	Is the risk map updated regularly and based on continuing monitoring?							
28	Is there a procedure to address residual risks including review by the Board?							

Principle 4: Implement a programme to counter small bribes

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
29	Has a senior executive been given responsibility for designing and implementing the programme to counter small bribes?							
30	Is a cross functional team used for designing the programme for countering small bribes and overseeing its implementation?							
31	Are local teams used to contribute to the design the programme to counter small bribes?							
32	Have you planned the communication and roll-out of the programme to counter small bribes?							
33	Have you planned for the support services and resources needed to implement the anti-small bribes programme?							
34	Do you have an approach of building your reputation in markets as a company that does not pay bribes including small bribes?							
35	Are employees required to make annual certification that they comply with the anti-bribery policy including small bribes?							

Principle 5: Communication and training of employees

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
36	Are employees and Board members given tailored communications training on countering small bribes?							
37	Do you use localised communications and approaches in countries with high risks of small bribes?							
38	Is the whistleblowing and advice channel promoted as a resource for countering small bribes?							
39	Are support functions given tailored training on the programme for countering small bribes?							
40	Does the training include how to deal with demands for small bribes that employees may meet in their personal lives?							
41	Are employees assessed for their understanding of the policy and procedures and ways to resist small bribes?							
42	Are the details of training attended and results of testing recorded on the employees' personnel files?							

Principle 6: Attention to third parties

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
43	Are tailored communications on the anti-bribery programme for small bribes given to all third parties?							
44	Is tailored training on the anti-bribery programme including countering small bribes given to all agents?							
45	Is tailored training on the anti-bribery programme including countering small bribes given to contractors and suppliers identified as at high risk of small bribes?							
46	Is there a procedure for regular monitoring of agents for risk of small bribes?							

47	Is due diligence carried out on all intermediaries and risk analysis on their scope of work before appointment and then are their ethics and reputation for paying small bribes periodically checked?							
48	Is risk-based due diligence carried out on contractors and suppliers before appointment and then periodically?							
49	Are all agents contractually required that they must comply with the company's anti-bribery programme?							
50	Are contractors and suppliers required contractually to not use bribery including small bribes and to take appropriate anti-bribery measures?							
51	Is there a procedure for regular monitoring of other third parties assessed as at risk of small bribes?							
52	Are the company's agent and supplier relationship managers used to monitor third parties for risks of small bribes?							
53	Are there procedures for application of sanctions to third parties when incidents of small bribes occur?							

Principle 7: Internal controls

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
54	Have the internal accounting controls been reviewed and adapted as necessary to mitigate the risks of small bribes?							
55	Is there a policy to avoid cash payments?							
56	Are there controls for cash per diems paid to officials to prevent these being a subterfuge for bribery?							
57	Are there periodic reviews of the effectiveness of the accounting controls to counter small bribes including reviews by Internal Audit?							
58	Does the Board receive reports regularly from management on the performance of the internal accounting controls for preventing small bribes?							

Principle 8: Actions if bribes are detected

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
59	Is there a procedure for handling small bribes made in violation of the policy?							
60	Is there a procedure to record any small bribes made, accurately in the books and records in a designated accounting code?							
61	Is a communications strategy designed ready for use for incidents so the position can be communicated promptly and accurately to those with a material interest?							
62	Is there a procedure for reporting as soon as possible to management and the legal department?							
63	Is the procedure for reporting reviewed by management and the legal department?							
64	Are reports made to senior management and the Board on the results of reviews and actions taken?							
65	Is consideration given to reporting the incident to the authorities, subject to legal review?							

Principle 9: Monitor and evaluate

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
66	Is monitoring and review carried out of the actions taken to implement the strategy and also carried out over the effectiveness of collaborative actions to counter small bribes?							
67	Do you obtain confirmation periodically from employees of their compliance with the programme to counter small bribes?							
68	Do you obtain certification annually by country and business unit managers that the procedures are implemented and assessed as working?							

69	Do you monitor the effectiveness of internal accounting controls for countering small bribes?							
70	Do you support the reviews for risks of small bribes with internal audits?							
71	Is there a procedure to amend the programme for countering small bribes based on the results of reviews?							
72	Has the company developed a list of red flags for small bribes?							
73	Do you document the monitoring exercises and their results?							
74	Are the results of reviews presented to management with recommendations for necessary changes to the anti-bribery programme?							
75	Are the results of reviews submitted to the Board?							
76	Do you report publicly on the monitoring and improvement procedure and the results for key indicators?							

Principle 10: Operating Environment

		Y	N	Un-clear	In plan?	Plan date	Comment	Evidence reference
77	Do you take part in collective action initiatives for countering small bribes?							
78	Do you advocate for changes related to countering small bribes in countries both on your own and through working with others?							
79	Do you contribute or make community investments to build integrity initiatives and develop measures to counter small bribes?							
80	Do you work to eliminate bribes through automation and changes in government processes?							

APPENDIX TWO: RED FLAGS

This checklist of red flags shows how and where demands can be met. Red flags are useful in training to alert employees and agents to risks, especially for support functions such as finance and internal audit that check or monitor for risks of bribery. Red flags are also important when designing controls to counter small bribes for use in due diligence on third parties and in monitoring and audits. Some suggestions for red flags are listed below. The checklist can be adapted and expanded using your company's research and experience

Transactions

Pattern of small payments in repeated situations such as customs, taxation, per diems	
Expense claims which have no supporting documentation and lack explanation of purpose	
Cash advances made to employees for no apparent valid purpose	
Expense payments made in round sums	
Payments made under self-prepared vouchers rather than third party documents	
Miscellaneous or unspecified sums included in invoices and unchallenged by the company	
Expenses appear excessive for the activities	
Evidence of payments that are not recorded in financial records	
Expenses cannot be satisfactorily explained	
Petty cash use is excessive	

Evidence from outcomes

Undue favourable treatment by government officials or private sector companies such as telecommunications or utility companies	
Agent moves employees quickly through passport control in groups	
Speedy entry into a country despite known demands and delays at border controls	
Our company moves goods quicker through ports and customs than competitors	
Expenses patterns differ between employees in similar circumstances or activities	

Absence of action or reporting

No anecdotal evidence or reports are made to management related to difficulties regarding small bribes despite operating in an environment where demands for such payments are commonplace	
No small bribes are reported as having been made	
Local contacts and peer companies identify concerns about small bribes demanded by particular government departments but no reports have been made by employees or intermediaries	
The agent or other third party does not wish our employees to be present at negotiations or interactions with officials	
The agent or other third party shows lack of commitment or interest in countering small bribes	

APPENDIX THREE: NOTES ON FACILITATION PAYMENTS

1. Background to legal exceptions for facilitation payments

The US Foreign Corrupt Practices Act (FCPA), which was passed in 1977, introduced in 1988 the concept of facilitating (also termed commonly as 'facilitation') payments with an exception from prosecution for such payments.⁹ This was to recognise a type of intractable bribery confronting US businesses when operating abroad. Since then, facilitating payments have attracted a considerable debate and controversy.

The artificiality of differentiating facilitation payments from other forms of bribery leads to uncertainties and inconsistencies for companies trying to reconcile their legal obligations and anti-bribery programmes across multiple jurisdictions. Codifying and permitting facilitation payments leads to anomalies and mixed messages, as well as perpetuating bribery in countries.

2. The changing landscape

Although the US and a small number of other jurisdictions have created exemptions for facilitation payments paid overseas, the legal landscape is changing.

OECD WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS RECOMMENDATION, 2009

The end of the facilitation payments exceptions from prosecution in laws may be in sight. In 2009, the OECD strengthened its call for countries to discourage facilitating payments with the adoption of a Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

In view of the corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law that Member countries should:

- i) undertake to periodically review their policies and approach on small facilitation payments in order to effectively combat the phenomenon
- ii) encourage companies to prohibit or discourage the use of small facilitation payments in internal company controls, ethics and compliance programmes or measures, recognising that such payments are generally illegal in the countries where they are made, and must in all cases be accurately accounted for in such companies' books and financial records

Canada passed a law in 2013 which, when it comes into force, will no longer provide an exception for facilitation payments. Now, only a handful of countries, including Australia, New Zealand, South Korea and the USA, fail to criminalise them when paid abroad. The high profile of the UK Bribery Act and its extra-territorial provisions has changed the landscape for companies that fall under the provisions of the Act and this is also influencing other companies to reconsider their policies and prohibit such payments. In addition, there is an ever-narrowing interpretation by the US authorities of the exception in the FCPA.

The United Nations, in a review of Australia's compliance with the UN Convention against Corruption, recently recommended in reference to facilitation payments that the Australian Federal Government should continue to 'encourage companies to prohibit or discourage the use of such payments, including in internal company controls, ethics and compliance programmes or measures'.¹⁰

9. 5 U.S.C. §§ 78dd-1(b) and (f)(3) [Section 30A of the Securities & Exchange Act of 1934]

10. UN, Australia's Compliance with UN Convention Against Corruption Chapters III and IV – Review team executive summary, 18 June 2012, http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CE4QFjAC&url=http%3A%2F%2Fwww.ashurst.com%2Fdoc.aspx%3Fid_Content%3D8550&ei=ixSvUqf0JsLRhAfLoYDYBQ&usq=AFQjCNG6rqtia6zaZhvPPAzSbYoNZIWP-w&bvm=bv.57967247,d.ZG4

Facilitation payments have always been illegal in UK law and remain illegal under the UK Bribery Act which makes no reference to them. The SFO has made clear that it considers facilitation payments are illegal.

SERIOUS FRAUD OFFICE STATEMENT ON FACILITATION PAYMENTS, 2012

Facilitation payments are illegal under the Bribery Act 2010 regardless of their size or frequency.

This absolute prohibition is consistent with the United Nations Convention against Corruption, which similarly does not allow any exception for the use of facilitation payments. It is also consistent with the policy of the Organisation for Economic Co-operation and Development (OECD), which in 2009 agreed to prohibit or discourage the making of such payments.

The Serious Fraud Office is the lead agency for the enforcement of the Bribery Act 2010. Individuals and companies that use facilitation payments in the course of their business are at risk of criminal prosecution in the UK.

The Serious Fraud Office is working with colleagues in the Foreign and Commonwealth Office (FCO) and other UK Government departments to disseminate this message. If a UK individual or company is asked to make a facilitation payment in the course of doing business overseas, they are actively encouraged to inform the FCO via the local embassy, high commission or consulate. A report will then be sent to the Serious Fraud Office.

The Serious Fraud Office will decide on the best course of action. This may involve communicating the information to a law enforcement agency in the country where the request was made, so that appropriate measures can be taken against the relevant public official.

The UK Government and the Serious Fraud Office are committed to stamping out bribery and upholding the rule of law. The Serious Fraud Office stands ready to take effective action against the use of facilitation payments, regardless of where they are requested.

David Green CB QC, Director of the Serious Fraud Office
6th December 2012

3. Ever narrowing interpretation by the US authorities

The Department of Justice and the Securities and Exchange Commission have increasingly narrowed the limits of the facilitation payment exception in settlements. The payments are now viewed as payments made to a low level governmental official to perform "a routine governmental action", i.e. an activity which he or she is required to do. The official can only speed up or delay an activity. The parameters for the exception remain subject to interpretation by the authorities but are broadly as follows:

No boundary for size of payments: Facilitation payments are commonly described as small payments, but in fact - under the FCPA - the exception is not dependent on the size of the payment. The frequency and aggregated value of small payments might also be considered and decided as an indicator of systemic bribery.

Purpose rather than value: The facilitating payments exception focuses on the purpose of the payment rather than its value. Is the company entitled to the action or service by the official?

Non-discretionary: The official must have no choice in the action for which the facilitating payment is being demanded. All the official can do is to provide the action or speed it up. If the official has discretion, then a payment would appear to have been made for obtaining an advantage not available to others.

Low level governmental official: The assumption here is that the degree of choice or discretion rises with the level of the official. A payment to a high level official would be interpreted as involving some discretion and fall outside the exception.

Extortion or Duress: Extortion is generally not a defence to bribery under the FCPA, unless it negates corrupt intent, i.e. the threat from the foreign official was so significant that the payment amounted to an involuntary act. There will not be an FCPA liability if a payment is made as a result of extortion or duress involving an imminent threat of physical harm. This includes situations in which a business makes a payment to an official to avoid threats to health and safety. However, this approach does not include economic coercion.

THE FCPA FACILITATING PAYMENT EXCEPTION: – IN THE DOJ’S OWN WORDS

‘The FCPA’s bribery prohibition contains a narrow exception for “facilitating or expediting payments” made in furtherance of routine governmental action. The facilitating payments exception applies only when a payment is made to further “routine governmental action” that involves non-discretionary acts. Examples of “routine governmental action” include processing visas, providing police protection or mail service, and supplying utilities like phone service, power, and water. Routine government action does not include a decision to award new business or to continue business with a particular party. Nor does it include acts that are within an official’s discretion or that would constitute misuse of an official’s office.’

A Resource Guide to the U.S. Foreign Corrupt Practices Act, The Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission

4. Uncertainties in trying to distinguish between facilitation payments and other small bribes

Although it is increasingly common for global companies to take a single, global no-bribes approach, some companies still try to distinguish between facilitation payments and other small bribes. This can create both legal and practical difficulties, as exemplified here.

Legal uncertainties

- *Uncertainty of what is a facilitation payment:* There is no absolute definition of a facilitation payment. The common understanding of facilitation payments is that they are small bribes, as defined for example in the Business Principles for Countering Bribery.¹¹ The US FCPA, on the other hand, creates an express exception for facilitating payments meant to secure the performance of non-discretionary routine government action. However, certain payments that the Statute provides as examples of facilitating payments are in fact ‘discretionary’, such as the provision of police protection.¹² Therefore, the discretionary/non-discretionary distinction has some ambiguity.
- *Size is not a measure of a facilitation payment:* There is also uncertainty over the permissible size of a payment. The FCPA’s facilitating payments exception focuses on the purpose of the payment rather than its value.
- *A moving target:* The FCPA exception refers to a foreign official but, with the growing privatisation of government services, today’s excepted facilitation payment to a foreign public utility official is tomorrow’s small bribe and illegal payment to a private sector water company employee. The transaction, bribe and social cost remain the same but it is no longer a facilitation payment.
- *Conflicts between laws:* Facilitation payments are illegal in almost all countries and if an official accepts such a payment it will likely be illegal locally. Laws such as the UK Bribery Act which have extra-territorial reach and make no exception from prosecution for facilitation payments may conflict with laws – such as the FCPA – which provide exceptions for facilitation payments.

Social issues

- *Perpetuating corruption:* Small bribes are part of a spectrum of corruption. They are not isolated acts. Often, facilitation payments are demanded within a network of bribery whereby junior officials have to share their bribery gains with seniors. The process of bribe taking is not confined to companies, citizens suffer demands too. By acquiescing in facilitation payments, companies can contribute to perpetuating the culture of corruption and detract from local efforts to achieve change.

11. ‘Facilitation payments: Also called “facilitating”, “speed” or “grease” payments, these are small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement’.

12. ‘Routine governmental action does not include the issuance of every official document or every inspection, but only (1) documentation that qualifies a party to do business and (2) scheduling an inspection—very narrow categories of largely non-discretionary, ministerial activities performed by mid- or low-level foreign functionaries’. *A Resource Guide to the U.S. Foreign Corrupt Practices Act* By the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, p111, Endnote 162

- *Double standards:* Facilitation payments are illegal in almost all countries. Australia, New Zealand, South Korea and the USA provide exceptions for payments abroad even though they are illegal domestically. This is a double standard which gives out a message increasingly hard to maintain which is 'These bribes are illegal in our country and also yours but we will not prosecute them when made in your country'.
- *Expedition is at others' expense:* The US FCPA exception refers to expediting performance. While securing a service may have no impact on others such as a discretionary action involving release of a tax refund or issue of a licence, speeding up a routine service involving jumping a queue may mean others are pushed back down the queue.

Business issues

- *Companies are not competing to the same rules:* Although facilitation payments are defined as not for obtaining or retaining business, companies that make a practice of using facilitation payments whether directly or through third parties can gain advantages such as moving goods through customs faster.
- *Vulnerability to bribery:* The tolerance of facilitation payments may be interpreted by corrupt third parties that the company is vulnerable to approaches related to bribery or extortion.
- *Books and records paradox:* If facilitation payments are permitted, then when made they should be recorded accurately in the books and records. Recording such payments, even if permitted under law, is uncomfortable for companies - and may constitute evidence of criminal conduct under the law of another country.

Employee confusion

- *Mixed message:* A policy of permitting facilitation payments is a source of confusion for employees and third parties and makes implementation of the anti-bribery programme difficult. On the one hand, a company may be committed to a prohibition of bribery and zero tolerance when instances occur, yet on the other hand it may allow certain bribes to be made if defined as facilitation payments. This can undermine the anti-bribery policy and confuse employees who may find it hard to deal with the often technical differentiation between a bribe and a facilitation payment.

APPENDIX FOUR: RESOURCES

Source	Organisation / publisher	Notes	Link
LEGISLATION			
UK Bribery Act 2010	UK Ministry of Justice	The Act	https://www.gov.uk/government/publications/bribery-act-2010-guidance
Guidance to the UK Bribery Act	UK Ministry of Justice	Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing	http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf
Statement of policy on facilitation payments	Serious Fraud Office, 2012	Policy	http://www.sfo.gov.uk/bribery--corruption/the-bribery-act/facilitation-payments.aspx
Adequate Procedures - Guidance to the UK Bribery Act 2010	Transparency International UK , 2010	Good practice guidance	http://www.transparency.org.uk/our-work/publications/10-publications/95-adequate-procedures-guidance-to-the-uk-bribery-act-2010
A Resource Guide to the U.S. Foreign Corrupt Practices Act	The Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission	Guidance	http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf http://www.justice.gov/criminal/fraud/fcpa/guide.pdf
INTERGOVERNMENTAL GUIDANCE ON FACILITATION PAYMENTS			
Recommendations for further combating bribery	OECD, 2009	Includes as Annex II the Good Practice Guidance on Internal Controls, Ethics and Compliance and calls on firms to periodically review policies and approach on small facilitation payments	http://www.oecd.org/corruption/governmentsagreetostepupfightagainstbribery.htm

Source	Organisation / publisher	Notes	Link
ANTI-BRIBERY GOOD PRACTICE			
Business Principles for Countering Bribery	Transparency International	Multi-stakeholder developed, good practice code	www.transparency.org
Good Practice Guidance on Internal Controls, Ethics, and Compliance	OECD, 2009	Guidance for a good practice anti-bribery programme	http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf
Anti-corruption and Ethics and Compliance Handbook	OECD 2013	Designed as a useful, practical tool for companies seeking compliance advice. It brings together, in one reference resource, the major international business guidance instruments and provides real-life case studies from companies on the application of these instruments in practice.	http://www.oecd.org/g20/topics/anti-corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm
Small Bribes Buy Big Problems	Alexandra Wrage and Matthew Vega, CIPE, 2009	Guidance on combating small bribes	www.cipe.org/publications/fs/pdf/092107.pdf
RISK MANAGEMENT			
Diagnosing Bribery Risk	Transparency International UK, 2013	A practical guide to bribery risk assessment which provides specific, practical advice based on real-life experience on how to conduct an effective bribery risk assessment.	http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf http://www.transparency.org.uk/our-work/publications/10-publications/678-diagnosing-bribery-risk
Guide for Anti-Corruption Risk Assessment, UN Global Compact, 2013	UN Global Compact, 2013	A practical, step-by-step guidance on how to conduct an anti-corruption risk assessment.	Guide for Anti-Corruption Risk Assessment, UN Global Compact, 2013

Source	Organisation / publisher	Notes	Link
RISK INDICATORS			
Corruption Perceptions Index	Transparency International	An annual Index which ranks countries and territories based on how corrupt their public sector is perceived to be.	www.transparency.org
Global Corruption Barometer	Transparency International	Survey assessing general public attitudes toward and experience of corruption in dozens of countries.	www.transparency.org
National Integrity System Assessments	Transparency International	Comprehensive country analyses of the anti-corruption provisions and capacities	www.transparency.org
OECD Risk Awareness Tool for MNEs in weak governance zones	Transparency International	Tool addressing risks and ethical dilemmas that companies are likely to face in countries prone to corruption.	www.transparency.org
Governance Indicators	World Bank	Aggregate and individual governance indicators for 212 countries and territories over the period 1996–2008, for six dimensions of governance.	http://info.worldbank.org/governance/wgi/index.asp
Doing Business: Smarter Regulations for Small and Medium-Size Enterprises	World Bank	Annual report series assessing regulations affecting domestic firms in global economies and ranks the economies in 10 areas of business regulation	http://www.doingbusiness.org/Reports/#sub-menu-item-link
Country reports	OECD	Country monitoring reports contain recommendations formed from rigorous peer-review examinations of each country.	http://www.oecd.org/daf/anti-bribery/countryreportsonteimplementationoftheoecdanti-briberyconvention.htm

Source	Organisation / publisher	Notes	Link
TRAINING			
RESIST: Resisting Extortion and Solicitation in International Transactions	Transparency International	Multi-stakeholder developed, good practice code	www.transparency.org
Doing Business without Bribery	Transparency International UK, 2012		http://www.transparency.org.uk/our-work/publications/94-ti-uk-doing-business-without-bribery-trainers-handbook http://www.doingbusinesswithoutbribery.com/
COLLECTIVE ACTION			
Fighting Corruption through Collective Action: A Guide for Business	World Bank and others		http://info.worldbank.org/etools/docs/antic/Whole_guide_Oct.pdf
Committee to Address Facilitating Payments (CAFP)		Collective action initiative by global companies	
Maritime Anti-corruption Working Group (MACN)		Collective action initiative by the shipping sector	http://www.bsr.org/en/our-work/working-groups/maritime-anti-corruption-network

£25

This publication has been provided free of charge by Transparency International UK. We depend on donations to allow us to continue our work. A contribution of £25 per reader will enable us to do so. If you would like to make a donation of any size, please visit:

www.transparency.org.uk/donate



Transparency International UK
32-36 Loman Street
London SE1 0EH
Tel: 020 7922 7906
Fax: 020 7922 7907
info@transparency.org.uk
www.transparency.org.uk